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HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. OSH 2007-12
DIRECTOR, DEPARTMENT OF LABOR) (Inspection No. 310386081)
AND INDUSTRIAL RELATIONS,)
) STIPULATION AND SETTLEMENT
Complainant,) AGREEMENT; EXHIBIT A; APPROVAL
) AND ORDER
vs.)
)
HAWAII OUTDOOR TOURS, INC.,)
)
Respondent.)
)

STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, the DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS, by his Hawaii Occupational Safety and Health Division, (Director), inspected the work site of HAWAII OUTDOOR TOURS, INC, (Respondent), located at 93 Banyan Drive, Hilo, Hawaii 96720, (Premises) on March 6, 2007 and March 7, 2007; and

WHEREAS, Respondent had acquired the Premises on February 6, 2006 and began hotel operations with reduced number of guest rooms and staff; and

WHEREAS, the Compliance Officer had inspected the Premises approximately one year before this inspection when the Premises was owned by the former owner; and

WHEREAS, the Compliance Officer noted during this prior inspection that the plant and equipment were in an extremely dilapidated state; and

WHEREAS, much of the Premises remained dilapidated when Respondent acquired the Premises; and

WHEREAS, Respondent, after acquisition, began and was still was in the process of repairing and renovating its plant and equipment on the date of the inspection; and

WHEREAS, the Respondent's workers were usually not exposed to the cited electrical hazards because the hazards were located in places seldom used by Respondent's workers or not readily inaccessible; and

WHEREAS, the Compliance Officer recommended a 50% reduction of the assessed penalty; and

WHEREAS, as a consequence of said inspection, the Director, issued a Citation and Notification of Penalty on April 2, 2007 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$4,200. See Exhibit A.

WHEREAS, Respondent has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22 on April 18, 2007;

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 93 Banyan Drive, Hilo, Hawaii 96720.

3. At all relevant times, Respondent was an employer, as defined in HRS §396-3, and employed employees, as defined in HRS §396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citation is amended as follows See Exhibit A:

a. Citation 2 Items 1 and 2 and their respective characterizations are affirmed but the aggregate penalty of \$4,200 is reduced to \$2,100 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

5. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

6. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

7. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

8. By entering into this Agreement, Respondent does not admit that it violated the cited standards of Citation 1 Items 1 and 2 for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law for similar and subsequent violations occurring at Respondent's worksite at 93 Banyan Drive, Hilo, Hawaii 96720.


9. Unless otherwise provided by this Agreement, nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, July 20, 2007.

APPROVED AS TO FORM:
Hawaii Outdoor Tours, Inc.

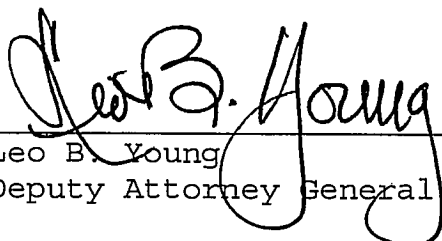
Hawaii Outdoor Tours, Inc.

Attorney for Respondent

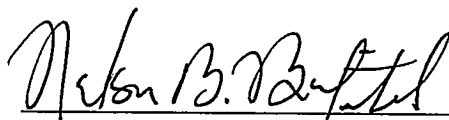
By: 
Its CEO

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



Leo B. Young
Deputy Attorney General

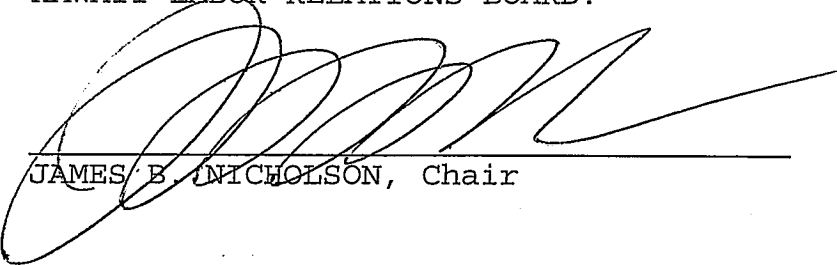


NELSON B. BEFITEL
Director of Labor and
Industrial Relations,
State of Hawaii

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 255

DATED: July 30, 2007



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SANDRA R. HIRAKAMI, Member
SARAH

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 1680 0000 9997 4377

Citation and Notification of Penalty

To:
Hawaii Outdoor Tours Inc
and its successors
93 Banyan Drive
Hilo, HI 96720

Inspection Number: 310386081 (George Smith)
Inspection Date(s): 03/06/2007 - 03/07/2007
Issuance Date: 04/02/2007
OSHC ID: E1353
Optional Report No.: 03107
Inspection Type: Planned
Scope of Inspection: Comprehensive Inspection

Inspection Site:
93 Banyan Drive
Hilo, HI 96720

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

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Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 04/02/2007. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310386081
Inspection Dates: 03/06/2007 - 03/07/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 04/02/2007

Citation and Notification of Penalty

Company Name: Hawaii Outdoor Tours Inc
Inspection Site: 93 Banyan Drive, Hilo, HI 96720

Citation 2 Item 1 Type of Violation: **Serious**

29 CFR 1910.151(c) [Refer to chapter 12-62.1, HAR] was violated because:

An eyewash station was not provided in the workplace for immediate emergency flushing of the eyes by employees who were exposed to corrosive chemicals used in the dishwasher. The potential result of failure to provide an emergency eyewash station is serious injury such as chemical burns, permanent eye damage, and/or blindness.

29 CFR 1910.151(c) states "Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use."

Location: Dishwasher area, kitchen

Date By Which Violation Must be Abated:
Penalty:

05/07/2007
\$875.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310386081
Inspection Dates: 03/06/2007 - 03/07/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 04/02/2007

Citation and Notification of Penalty

Company Name: Hawaii Outdoor Tours Inc
Inspection Site: 93 Banyan Drive, Hilo, HI 96720

Citation 2 Item 2 Type of Violation: Serious

29 CFR 1910.215(b)(9) [Refer to chapter 12-80.1, HAR] was violated because:

Adjustable upper guards (tongue guards) were missing on both sides of a Delta bench grinder used for sharpening mower blades. The potential result of failure to maintain properly adjusted upper guards could be serious injury such as fractures and/or internal injuries from being struck by fragments of a broken abrasive wheel.

29 CFR 1910.215(b)(9) states "Safety guards of the types described in Subparagraphs (3) and (4) of this paragraph, where the operator stands in front of the opening, shall be constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (b)(3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed one-fourth inch."

Location: Maintenance shed

Date By Which Violation Must be Abated:
Penalty:

05/07/2007
\$700.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310386081
Inspection Dates: 03/06/2007 - 03/07/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 04/02/2007

Citation and Notification of Penalty

Company Name: Hawaii Outdoor Tours Inc
Inspection Site: 93 Banyan Drive, Hilo, HI 96720

Citation 2 Item 3 Type of Violation: **Serious**

29 CFR 1910.305(b)(1) [Refer to chapter 12-89.1, HAR] was violated because:

Unused openings in an electrical junction box and a circuit breaker panel board were not effectively closed, thus exposing employees to the risk of contact with live electrical parts. The potential result of contact with the live parts could be serious injury or death from electrocution.

29 CFR 1910.305(b)(1) states "Conductors entering boxes, cabinets, or fittings shall also be protected from abrasion, and openings through which conductors enter shall be effectively closed. Unused openings in cabinets, boxes, and fittings shall be effectively closed."

- Location: (a) Rear of Gift Shop by circuit breaker panel board [NOTE: This instance was corrected during the inspection by installing a plug in the unused opening.]
(b) Circuit breaker panel labeled PNL A, in circuit breaker room in hall outside kitchen

Date By Which Violation Must be Abated:
Penalty:

04/09/2007
\$875.00

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310386081
Inspection Dates: 03/06/2007 - 03/07/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 04/02/2007

Citation and Notification of Penalty

Company Name: Hawaii Outdoor Tours Inc
Inspection Site: 93 Banyan Drive, Hilo, HI 96720

Citation 2 Item 4 Type of Violation: **Serious**

29 CFR 1910.305(b)(2) [Refer to chapter 12-89.1, HAR] was violated because:

Covers were not provided for two duplex electrical receptacles and a light switch, thus exposing employees to the risk of contact with live electrical parts. The potential result of contact with the live parts could be serious injury or death from electrocution.

29 CFR 1910.305(b)(2) states "All pull boxes, junction boxes, and fittings shall be provided with covers approved for the purpose. If metal covers are used they shall be grounded. In completed installations each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear."

- Location:
- (a) Pro shop, duplex outlet behind desk
 - (b) Maintenance shed, duplex outlet on wall of chemical room
 - (c) Maintenance shed, light switch in hallway outside restroom

Date By Which Violation Must be Abated:
Penalty:

04/09/2007
\$875.00

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310386081
Inspection Dates: 03/06/2007 - 03/07/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 04/02/2007

Citation and Notification of Penalty

Company Name: Hawaii Outdoor Tours Inc
Inspection Site: 93 Banyan Drive, Hilo, HI 96720

Citation 2 Item 5 Type of Violation: Serious

29 CFR 1910.1200(g)(1) [Refer to chapter 12-203.1, HAR] was violated because:

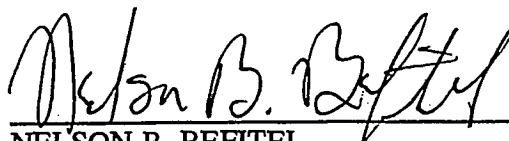
The employer did not have material safety data sheets in the workplace for two hazardous corrosive chemicals used in the workplace. The potential result of failure to provide material safety data sheets for hazardous chemicals could be serious injury such as permanent eye damage and/or blindness from contact with corrosive chemicals, due to lack of knowledge of hazards, proper handling methods, and personal protective measures. [NOTE: This violation was corrected during the inspection.]

29 CFR 1910.1200(g)(1) states "Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet in the workplace for each hazardous chemical which they use."

Location: Kitchen

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$875.00


NELSON B. BEFTEL
DIRECTOR

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: Hawaii Outdoor Tours Inc
Inspection Site: 93 Banyan Drive
Hilo, HI 96720
Issuance Date: 04/02/2007

Summary of Penalties for Inspection Number 310386081

Citation 01, Serious = \$4,200.00

TOTAL PENALTIES = \$4,200.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.